

Proc I

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

[Protest of Partial Cancellation of IFB]

10,350

FILE: B-194411

DATE: June 4, 1979

MATTER OF: Strand Aviation, Inc.

DIGEST:

1. Contracting officer canceled individual item of IFB for price unreasonableness and resolicited same requirement, after low bidder's contract was invalidated, because second low bid was more than 15 percent above Government estimate and 20 percent above low bid, and because there were insufficient funds to award item at second low bid price. In such circumstances, contracting officer's decision to reject all otherwise eligible bids and to resolicit was not unreasonable.
2. Voluntary price reduction, offered by protester after notification that agency was rejecting all otherwise eligible bids as unreasonably priced, was properly rejected by contracting officer. Solicitation provides that late modification of "otherwise successful bid" which makes bid terms more favorable to Government shall be considered at any time received, but since protester's bid had already been rejected as unreasonably priced, protester was not "otherwise successful bidder."

has been
unreasonable
5/6/6

was not
permitted

DLC 01705

AGC 00034

Strand Aviation, Inc. (Strand), protests the partial cancellation of invitation for bids (IFB) No. R1-11-79-17, issued by the Forest Service, United States Department of Agriculture. The solicitation was for the procurement of aircraft services for various national parks and indicated that award would be made individually on each item listed in the schedule. The Forest Service canceled that portion of the IFB for aircraft services in West Yellowstone, Montana (Item 1), after making a determination that all prices for Item 1 in otherwise acceptable bids were unreasonable.

Bids were opened on March 5, 1979. The low bid submitted on Item 1 was \$7,170 for an estimated 120 hours

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of service for the first year of the contract, or \$59.75 per hour. The Forest Service estimated that the price per hour for Item 1 should be \$64.83. Strand's bid on this item totaled \$9,000, or \$75 per hour, and was the second low bid. On March 6, 1979, award of Item 1 was made to the low bidder, but the resulting contract was invalidated when the contracting officer verified that the awardee did not possess an Air Taxi License as required under the IFB. The contracting officer determined that all remaining eligible bids were unreasonably high since Strand's bid was more than 13 percent above the Government estimate (15 percent by our calculations) and more than 20 percent above the lowest bid and because the Forest Service budget did not contain sufficient funds to make award at Strand's higher price. The contracting officer, therefore, rejected all remaining bids and initiated action to readvertise for this requirement by letter of March 9, 1979.

On March 13, 1979, solicitation No. R1-11-79-35, the readvertisement, was issued. Upon receipt of the contracting officer's March 9, 1979, letter stating that Strand's bid exceeded the Government estimate, that no award would be made for Item 1, and that the requirement of Item 1 would be readvertised, a representative of Strand telephoned the contracting activity on March 14, 1979, to inquire whether a lower bid by Strand would be considered. On March 16, 1979, the contracting activity notified Strand that a lower bid price for Item 1 would not be accepted from Strand since the reduction in price was offered by Strand after rejection of all bids and after the initiation of the readvertisement. By letter of March 19, 1979, Strand formally reduced its bid price to \$7,680 for the estimated 120 hours of service for the first year under Item 1, or \$64 per hour.

Strand protests that the Forest Service's price estimate on the initial solicitation for Item 1 was too low and points out that an award had been made under Item 4 of the solicitation at a price of \$75 per hour with an identical minimum payment guarantee as Item 1. Further, its experience over the past two seasons

indicated that actual flying would barely equal the hours reflected by the guarantee (\$5,000). Strand also protests that the Forest Service should have accepted Strand's voluntary price reduction under Standard Form (SF) 33-A (Solicitation Instructions and Conditions) once the Forest Service invalidated the award of Item 1 to the low bidder.

Regarding the Forest Service estimate, the agency points out that Item 4 called for an estimated 75 hours of service whereas Item 1 was for an estimated 120 hours of service. The Forest Service argues that, due to the greater number of estimated flight hours on Item 1, a lower price per hour could reasonably be anticipated for Item 1 services and, therefore, the Government estimate for Item 1 was lower than the estimate for Item 4. Further, the number of hours was increased from the previous year (from 100 to 120) as one of several measures taken to reduce operational costs in the area due to severe funding reductions.

Section 1-2.404-1(a) of the Federal Procurement Regulations (FPR) (1964 ed. amend. 121) provides that, in an effort to preserve the integrity of the competitive bidding system, after bids have been opened award must be made to the lowest responsive, responsible bidder unless there is a "compelling reason" to reject all bids. Under FPR § 1-2.404-1(b)(5) (1964 ed. circ. 1), an IFB may be canceled if the prices on all otherwise acceptable bids are determined by the contracting officer to be unreasonable. Contracting officers have broad powers of discretion to decide whether a solicitation should be canceled and our Office will not interfere with such a determination absent a lack of reasonableness. The determination may be based upon comparison with a Government estimate, past procurement history, current market conditions, or any other relevant factors, including any which may have been revealed by the bidding. PM Contractors, Inc., B-192495, January 8, 1979, 79-1 CPD 8.

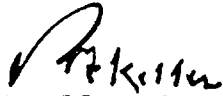
We cannot find that the contracting officer's decision to reject all otherwise acceptable bids was unreasonable. We are not persuaded by Strand's argument that an award made on Item 4 at a price of \$75 per hour shows that the Forest Service estimate of \$64.83 per hour for Item 1 was necessarily too low. We agree with the Forest Service

that the price for Item 1 could reasonably be expected to be lower than that for Item 4 since the estimated hours of service for Item 4 are substantially less than the estimated hours of service for Item 1, the hours for which were increased from the previous year. This view is also substantiated by the proximity of the low bid of \$59.75 per hour. In this regard, we have recognized that the bid of an unacceptable bidder may be relevant to the determination of what is a reasonable price. Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. Moreover, Strand was willing to voluntarily lower its price for Item 1 to approximately the Government estimate after advice of the Forest Service's rejection of all otherwise acceptable bids for price unreasonableness. In any event, the contracting officer determined that there were insufficient funds in the Forest Service budget to award Item 1 at Strand's original bid price, and we have held that an agency determination that funds are not available for contract obligation is sufficient reason to reject all eligible bids received. See TIMCO, B-186177, September 14, 1976, 76-2 CPD 242.

Regarding Strand's contention that the Forest Service should have accepted Strand's voluntary price reduction and awarded to Strand after the contracting officer had rejected all otherwise eligible bids as unreasonable in price, clause 7 of SF 33-A, entitled "Late Bids, Modifications of Bids, or Withdrawal of Bids," states in pertinent part that "a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted." This language is derived from FPR § 1-2.305 (1964 ed. amend. 118). The record shows that the contracting officer had rejected all otherwise eligible bids for price unreasonableness before Strand offered a price reduction. Moreover, Strand concedes that it had received the March 9, 1979, letter from the contracting activity which indicated that Strand's bid was rejected as unreasonably high before Strand offered a price reduction on Item 1. Therefore, we have no basis upon which to object to the Forest Service's refusal to accept Strand's price reduction since a bid determined to be unreasonably high cannot be said to be that of the "otherwise successful"

bidder which is entitled voluntarily to reduce its bid
after opening. See 52 Comp. Gen. 40, 43 (1972).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States